

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR PROPOSED REGULATORY ACTION
(Pre-publication of Notice Statement)

Amend Section 120.7 and Subsection 190(c)
Title 14, California Code of Regulations
Re: Sea Urchin Fishing and Fishing Activity Records

- I. Date of Initial Statement of Reasons: April 10, 2003
- II. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: May 8, 2003
Location: Riverside, CA
 - (b) Adoption Hearing: Date: August 2, 2003
Location: Long Beach, CA
- III. Description of Regulatory Action:
 - (a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

Existing law (subsection 120.7(a), Title 14, CCR) prohibits anyone without a valid sea urchin diving permit diving from a vessel from which sea urchins are being taken or possessed for commercial purposes.

The proposed regulatory action would clarify that the Department may authorize persons without a valid sea urchin diving permit to dive from those vessels for purposes of sea urchin management or research.

Existing law (subsection 120.7(c)(1), Title 14, CCR) requires that applicants for issuance of commercial sea urchin diving permits must have made at least 20 landings of at least 300 pounds each of sea urchin during one of the two immediately preceding permit years.

The proposed regulatory action would repeal that requirement.

Existing law (subsection 120.7(d)(2), Title 14, CCR) provides for issuance of new permits, dependent on whether the number of renewed permits is less than or greater than 300. The regulation only implies what happens when the number of renewed permits equals 300.

The proposed regulatory action will specify that no new permits will be available when the number of renewed permits equals 300.

Existing law (subsection 120.7(e)(1), Title 14, CCR) establishes a deadline for the late renewal of sea urchin diving permits of July 30 of each year.

The proposed regulatory action would add one day to that deadline to conform to statute.

Existing law does not specify when or where applications for any new sea urchin diving permits that may become available should be submitted.

The proposed regulatory action would correct that omission by providing that information.

Existing law (subsection 120.7(e)(2)(B), Title 14, CCR) provides that any person who held a valid, unrevoked commercial abalone diving permit in the 1996-97 or 1997-98 permit year is eligible to apply for any new sea urchin diving permits that may become available for issuance under prescribed conditions.

The proposed regulatory action would repeal that provision.

Existing law (subsection 120.7(e)(4), Title 14, CCR) establishes a procedure for issuance of any new sea urchin diving permits that may annually become available when there are more applicants than there are permits available.

The proposed regulatory action would modify that procedure by allowing each qualified applicant one entry into the drawing plus one additional entry for each year above the minimum required two years that the applicant has possessed a sea urchin crewmember permit, up to a maximum of five entries for the drawing.

Existing law (subsection 120.7(h), Title 14, CCR) provides that any applicant who is denied a sea urchin may appeal that denial to the Commission.

The proposed regulatory action would modify that process by allowing the Department to receive and decide on an appeal. An appellant who disagreed with the Department would then have up to 60 days after the Department's decision to appeal to the Commission.

Existing law (subsection 120.7(l), Title 14, CCR) exempts sea urchin divers from having to possess a Tidal Invertebrate Permit.

The proposed regulatory action would extend that exemption to sea urchin crewmembers.

Existing law (subsection 120.7(m), Title 14, CCR) establishes the open and closed seasons for the take of red sea urchins. From November through March fishing is open seven days a week. In April and October fishing is open only Monday through Thursday. In May and September the open season is Monday, Tuesday, Wednesday and Thursday, except closed the second full week. In June and August the open season is Monday, Tuesday and Wednesday except closed during the second full week. In July the season is closed north of the Monterey - San Luis Obispo county line while south of that line the season is open on Monday and Tuesday except closed during the second full week.

The proposed regulatory action provides three options to recast those open and closed seasons from May through September as follows:

Option one would repeal the existing second full week closures in all months; would reduce the days of the week open to fishing in May and September by one day per week; would retain the three days per week fishing in June and August; would retain the two days per week in July in southern California; and would make the open days per week in northern California the same as southern California.

Option two would also repeal the existing second full week closures in all months; and would open northern California to fishing on Monday and Tuesday in the month of July.

Option three would repeal the existing second full week closures except those in May and September in southern California; would reduce the days of the week open to fishing in May and September by one day per week in northern California; and would open northern California to fishing on Monday and Tuesday in the month of July.

The Commission could choose to adopt a single option or any portion of any option could be combined with portions of other options to select the final format of the open and closed days of the week between May and September.

Existing law (subsection 120.7(n), Title 14, CCR) requires the operator of a sea urchin vessel to submit a record of daily fishing activities on form DFG-120.7, October, 1987. The record shall be submitted on or before the fifth day of each month following the month to which the record pertains. However, Section 190, Title 14, CCR requires all fishing activity records to be submitted on or before the tenth day of each month following the month to which the records pertain.

The proposed regulatory changes will update the log book designation to show the current version and incorporate it into the regulations by reference. They will also change the time by which the records must be submitted from five to ten days to conform to Section 190. Also, the address given in Section 190 for the return of those records is no longer valid and will be corrected.

Existing law (Section 120.7, Title 14, CCR) contains several minor typographical and numbering errors that will be corrected in the proposed regulatory action.

A formal limited entry program was adopted for the sea urchin fishery in the late 1980s at a time when statewide landings of red sea urchin were over 35 million pounds per year. At the beginning of the process to establish the limited entry program there were about 450 permits and before the process could be completed the number issued more than doubled, to about 915. At that time and into the early 1990s a series of regulatory changes was adopted to reduce the number of permit holders and the level of effort and the catch. All changes intended to provide for the long-term sustainability of the sea urchin resource and fishery. Since that time the nature and methods of the "demand" side of the fishery have changed markedly and the regulations as written no longer serve to provide for an orderly, economically sustainable fishery.

A minimum landing requirement (MLR) of at least 20 landings of at least 300 pounds each in one of the immediately preceding two years was established to help winnow out some of the 915 persons who may have initially purchased their permit (in 1987) in speculation that the permit would become transferrable and acquire a value. With current harvest levels around 13 million pounds (CY 2001) and 384 permits the MLR requires the harvest of 2.3 million pounds (about 18 percent of the total landings) every other year for permit holders to renew their permits. The sea urchin industry notes that the proposed repeal of the MLR would reduce the pressure that is now on sea urchin divers to harvest sea urchins to meet those MLRs even when market conditions and/or quality of the product might dictate that the resource would best be left unharvested until a more opportune time. This in turn would foster a more stable and orderly fishery.

The commercial fishery for abalone was closed by statute in 1998. In order to provide some form of relief for the approximately 120 fishermen who lost their abalone diving privileges, the sea urchin regulations were amended to allow entry into the drawing for new sea urchin diving permits to anyone who held a valid abalone diving permit in the 1996-97 or 1997-98 license year. The sea urchin fishery has declined by about 100 permittees since 1998 and it is no longer reasonable to provide former abalone diving permittees with an entry into the sea urchin permit drawing if they have not demonstrated an interest in that fishery by participating as sea urchin crewmembers.

Currently, the other way to qualify for a new sea urchin diving permit requires that a person must have held a sea urchin crewmember permit in each of the preceding two permit years. Many sea urchin crewmembers have served for much more than the required two years, yet receive no special recognition or consideration for that accumulated experience and service in the drawing. The proposed regulations would allow each crewmember one additional entry into the drawing for each year above the minimum required two years, up to a maximum of five entries in the drawing for a particular year. This would provide a slight bias to more experienced crew members for the issuance of new permits.

Existing regulation (subsection (d)(2) of Section 120.7, Title 14, CCR) specifies the procedures to be taken to issue new sea urchin diving permits when the number of previously issued permits is more than 300 and when that number is less than 300. The procedures to be followed when the number of previously issued permits is equal to 300 is only implied and not specified. The proposed amendments would clarify that no new permits would be issued when the number of previously issued permits equals 300.

As landings in the sea urchin fishery grew from initial levels of a few million pounds per year (early 1970s) to over 20 million pounds per year (late 1970s - early 1980s) and with appearances of climbing even higher, a series of seasonal fishing restrictions (closures) were instituted to help hold harvest to lower levels. The initial restrictions were not effective in holding landings to lower levels as the fishery expanded into northern California and exceeded 50 million pounds in the late 1980s, so further closures were added.

One of the factors that helped fuel the expansion of the fishery was the economic and trade relationship between the United States and Japan, especially in the dollar/yen ratio that favored a large volume of sea urchin exports from California to Japan. That relationship has changed greatly to current times and the sea urchin industry has made significant adjustment to remain economically viable. Much of the product is now of a higher quality and more is retained for sale in speciality restaurants within California. This change requires that divers and processors have greater flexibility in scheduling of their operations and they are unable to do so within the existing regulatory structure of open and closed seasons. The industry would have an opportunity to provide a more balanced supply to the market place with some fishing allowed each week every month of the year.

The proposed changes would repeal the second full week closure in one or more of the months from May through September and offer three options for other closures to choose from as follows:

Option one: repeal the second full week closures in all months and reduce the open days per week by one day in May and September; leave unchanged the open days in June and August; and repeal the existing month long closure in July in northern California; The overall effect would be to provide a uniform three-day per week season statewide in May, June, August and September and a two-day per week season in July.

In May and September there would be no net change in the number of days open to fishing (three Thursdays would be closed and one Monday, Tuesday and Wednesday would be opened). In June and August there would be three more days open for fishing (Monday, Tuesday and Wednesday of the second full week of each month). In July there would be two more days open for fishing in southern California (Monday and Tuesday of the second full week) and eight more days open for fishing in northern California (Monday and Tuesday of each week). Given the calendar in 2003, for example, the net annual change would equal seven additional fishing days per year in southern California and fourteen additional days in northern California.

Option two: repeal the second full week closures in all months and leave unchanged the days open to fishing in May, June, July, August and September (four, three, two, three and four, respectively); and open northern California to fishing on Monday and Tuesday in July. The net annual change would be sixteen additional days per year in southern California and twenty three additional days in northern California.

Option three: leave unchanged the days open to fishing in May and September in southern California (south of the Monterey-San Luis Obispo county line); repeal the second full week closures in May and September and reduce the days of the week open to fishing from four to three in northern California (north of the Monterey-San Luis Obispo county line); repeal the second full week closures statewide and leave unchanged the days open to fishing from June through August; and open northern California to fishing on Monday and Tuesday in July. The net annual change would be four additional days per year in southern California and ten additional days per year in northern California.

Statewide landings in June and August 2001 were about 800,000 and 980,000 pounds, respectively. Landings in southern California in July 2001 were about 350,000 pounds. While it is not possible to predict the actual effect of the reduction in number of days closed to fishing in July, we could expect that statewide landings would be similar to June and August, or somewhere close to one million pounds, about 650,000 pounds above the southern California

harvest in July 2001. Any presumed impacts to the sea urchin resource would be tempered by the repeal of the minimum landing requirements, which account for approximately 2.3 million pounds per two year period. In addition, recent closures of fishing grounds at the southern Channel Islands, off Santa Barbara and Ventura counties are expected to reduce harvest levels in those areas by an unknown amount.

Existing regulation (subsection (h) of Section 120.7, Title 14, CCR) provides that any applicant who is denied a sea urchin diving permit may appeal that denial to the Commission. Many of these appeals could reasonably be addressed administratively by the Department without requiring the applicant to appear before the Commission's hearing officer. The proposed amendments would authorize the Department to review and decide the appeal before the applicant had to appeal to the Commission, yet retains that option for anyone dissatisfied with the Department's decision.

Existing regulation (subsection (l) of Section 120.7, Title 14, CCR) exempts sea urchin divers from having to obtain a Tidal Invertebrate Permit while harvesting sea urchins. This subsection was first prepared before there was a sea urchin crewmember permit. The proposed regulatory action would clarify that the exemption applies to sea urchin crewmember permittees.

Existing regulation (subsection (n) of Section 120.7, Title 14, CCR) requires that a record of sea urchin fishing activity be recorded on form DFG-120.7, October 1987, and be sent on or before the fifth day of each month following the month to which the activity pertains to the Department's Long Beach office.

The proposed regulatory action would change the form designation to the latest version, dated "5/99" and incorporate the form by reference into the regulations and change the time permitted for the return of the forms from five days to ten days to conform to the provisions of subsection 190(c), Title 14, CCR (see next paragraph). The Department's Long Beach office has been moved to Los Alamitos. The proposed regulatory changes would correct that location.

Existing regulation (Section 190, Title 14, CCR) sets forth conditions relating to fishing activity records generally and provides that such records shall be transmitted to the Department on or before the tenth day of each month following the month to which the records pertain. This section also specifies that the records be sent to a Department office in Long Beach which has been moved to Los Alamitos.

The proposed regulatory action would amend subsection 120.7(n) to conform to the ten days allowed for the return of fishing activity records and show the correct location of the Department's Los Alamitos office.

Several subsections of Section 120.7, Title 14, CCR, are misnumbered. The proposed regulatory changes would correct the errors in section numbering.

(b) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority: Sections 1050, 7923, 8026, 9054 and 9055, Fish and Game Code.
Reference: Sections 1050, 7850, 7852.2, 7857, 7923, 8026, 9054 and 9055, Fish and Game Code.

(c) Specific Technology or Equipment Required by Regulatory Change:

No new technology or equipment would be required by the proposed changes.

(d) Identification of Reports or Documents Supporting Regulation Change:

February 3, 2003 letter from Charles Igawa, PhD., Chairman, Sea Urchin Fishery Advisory Committee, with enclosure.

(e) Public Discussions of Proposed Regulations Prior to Notice Publication:

Members of the sea urchin industry made presentations on behalf of proposed regulatory changes during the Public Forum agenda item at the Commission's February 6 and April 4, 2003 meetings.

IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

The Department considered and rejected not having a limit on the number of additional random numbers that an applicant could acquire based on total years of participation as a sea urchin crewmember because it could create a situation where first time applicants would have virtually no chance at obtaining a permit.

The Department considered and rejected other combinations of open and closed days of the week during the period May through September as being either potentially too restrictive to assist the sea urchin industry marketing or too liberal for the protection of the sea urchin resource.

(b) No Change Alternative:

The no change alternative would retain the existing regulatory structure, which, taken in whole could adversely affect the economic viability of the fishery by continuing to require the harvest of over 2 million pounds of sea urchin every two years solely to meet minimum landing requirements and preventing the flexibility needed by both fishermen and processors to meet the changing demands of the international and domestic marketplaces.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulatory options.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

VI. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States.

The proposed regulatory action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Each sea urchin diver and processor is considered a business. The proposed regulatory changes will repeal a requirement that each permittee harvest at least 6,000 pounds of sea urchins every other year to renew their permit, but will not otherwise limit their ability to harvest that amount of sea urchins. The proposed regulatory changes will provide both sea urchin divers and sea urchin processors greater flexibility in managing the harvest and sale of sea urchins during the months of May through September.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.

(c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

(e) Other Nondiscretionary Costs/Savings to Local Agencies: None.

(f) Programs Mandated on Local Agencies or School Districts: None.

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.

(h) Effect on Housing Costs: None.

Informative Digest/Policy Statement Overview

Existing regulations prohibit anyone without a valid sea urchin diving permit from diving from a sea urchin vessel during commercial fishing operations.

The proposed regulatory changes would clarify that the Department may authorize non-permitted divers to dive from a sea urchin vessel for the purposes of sea urchin management or research.

Existing regulations require applicants for renewal of sea urchin diving permits to have made at least 20 landings of at least 300 pounds each in one of the two immediately preceding permit years.

The proposed regulatory changes would repeal that minimum landing requirement for permit renewal.

Existing regulations establish the deadlines for late renewal of a sea urchin diving permit.

The proposed regulatory changes would add one day to that deadline to conform to statute.

Existing regulations establish the number of new sea urchin permits to be made available when either more than or less than 300 permits are renewed by August 1 of each year, but do not specify how many are available when exactly 300 permits are renewed.

The proposed regulatory changes would clarify that when the number of renewed permits is 300 no new permits would be available.

Existing regulations provide that any person who held a valid abalone diving permit in the 1996-97 or 1997-98 license year is eligible to apply for any new sea urchin diving permits that may become available each year.

The proposed regulatory changes would repeal that provision.

Existing regulations do not specify where or when applications for any new sea urchin diving permits that may become available should be submitted.

The proposed regulatory changes would clarify when and where they shall be sent.

Existing regulations provide that any person who has possessed a sea urchin crewmember permit for the immediately two preceding permit years may apply for any new sea urchin diving permits that may become available. If there are more applicants

than permits available, a drawing will be held to select the successful applicants. All applicants have an equal opportunity of being selected in the drawing.

The proposed regulatory changes would provide that any person who has possessed a crewmember permit for more than the required two years would be entered into the drawing one additional time for each year above the minimum two years that the applicant has possessed a crewmember permit, in any drawing held for new permits, up to a maximum of five entries in any drawing (for any person who has had a crewmember permit for seven or more years).

Existing regulations specify that any drawing held to issue new sea urchin diving permits will be held on the Wednesday nearest August 15 of each year.

The proposed regulatory changes would simplify that date to specify the drawing, if needed, would be held on the third Wednesday in August of each year.

Existing regulations provide that the season for red sea urchin fishing in May and September is open Monday, Tuesday, Wednesday and Thursday, except closed during the second full week; is open in June and August on Monday, Tuesday and Wednesday, except closed the second full week; and in July, north of the San Luis Obispo - Monterey county line is closed and that south of that line the season is open only on Monday and Tuesday, except closed for the second full week.

The proposed regulatory changes provide three options that would recast those open days from May to September.

All options would repeal some or all of the second full week closures in each month.

Option one would also make a uniform open season of Monday, Tuesday and Wednesday in May, June, August and September and a uniform statewide open season of Monday and Tuesday in July.

Option two would retain the existing four days per week open season in May and September and the existing three days per week open season in June and August and make a uniform statewide two days per week open season in July.

Option three would retain the existing open season in May and September in southern California (south of the Monterey-San Luis Obispo county line) while in northern California (north of the Monterey-San Luis Obispo county line) the second full week closure would be repealed and the days open for fishing would be reduced from Monday, Tuesday, Wednesday and Thursday to only Monday, Tuesday and Wednesday. In June and August the second full week closures would be repealed statewide and fishing days (Monday, Tuesday and Wednesday) would remain the same. In July the second full week closure in southern California and the full month

closure in northern California would be repealed so fishing would be open statewide on Monday and Tuesday.

The Commission could adopt a single option or any part or parts of one or more of the three options in combination for the final regulations.

Existing regulations (subsection (n) of Section 120.7, Title 14, CCR) require sea urchin fishing log books to be sent to a Department office on or before the fifth day of each month. This requirement is in conflict with Section 190, Title 14, CCR that requires all fishing activity records to be submitted on or before the 10th day of the month following the month to which the records pertain.

The proposed regulatory changes would conform subsection 120.7(n) to Section 190.

Existing regulations require fishing activity records to be submitted on form DFG-120.7, October 1987.

The proposed regulatory changes would update the version of form DFG-120.7 to reflect the most recent version (DFG 120.7(5/99)), and incorporate that form by reference.

Existing regulations have several subsection numbering errors, typographic errors and a reference to the Department's former Long Beach office.

The proposed regulatory changes would correct the numbering errors and the reference to the former Long Beach office.

Section 190, Title 14, CCR contains a mailing address for the return of fishing activity records that is no longer valid.

The proposed regulatory changes would correct that mailing address.